

1 BILL LOCKYER
Attorney General
2 TOM GREENE
Chief Assistant Attorney General
3 THEODORA BERGER
Senior Assistant Attorney General
4 TIMOTHY R. PATTERSON (State Bar No. 72209)
Supervising Deputy Attorney General
5 Office of the Attorney General
110 West A Street, Suite 1100
6 San Diego, CA 92101
Telephone: (619) 645-2013
7 Fax: (619) 645-2012

8 Attorneys for Plaintiff People of the State of California ex rel.
Edwin F. Lowry, Director, California Department of
9 Toxic Substances Control

10
11 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF SAN DIEGO

13
14 PEOPLE OF THE STATE OF CALIFORNIA, ex rel.
Edwin F. Lowry, Director, California Department of
15 Toxic Substances Control,

16 Plaintiff,

17 v.

18 PACIFIC STEEL, INC., a California corporation,

19 Defendant.
20

Case No.:

GIC

833049

STIPULATION FOR ENTRY OF
FINAL JUDGMENT AND
INJUNCTION

21 Plaintiff, the People of the State of California, ex rel. Edwin F. Lowry, Director,
22 California Department of Toxic Substances Control ("Department") and defendant Pacific Steel,
23 Inc., a California corporation ("Pacific Steel"), by and through their respective representatives
24 and counsel, enter into this Stipulation for Entry of Final Judgment and Injunction ("Stipulation")
25 as follows:

26 1. The Site. Defendant Pacific Steel is an active California corporation (No.
27 C1080279). It is engaged in the business of recycling scrap metal at its facility located at 1700
28 Cleveland Avenue, National City, California 91950-4215 ("the Site"). The Site is comprised of

FILED
BUSINESS OFFICE 13
DIVISION
2004 JUL 21 P 3:55
CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

1 three areas of real property that have been designated the "North Parcel," the "South Parcel," and
2 the "BNSF Parcel." Pacific Steel is the record owner of real property known as the "North
3 Parcel" of the Site (Assessors Parcel Numbers 559-051-09, -11, and -12; 559-056-03; and 559-
4 071-04 (northern one-third of parcel). Pacific Steel also is the record owner of the real property
5 known as the "South Parcel" of the Site (Assessors Parcel Numbers 559-071-04 (southern two-
6 thirds of parcel); 559-076-01, -02, -09, and -10). The remainder of the Site, known as the "BNSF
7 Parcel," currently is leased by Pacific Steel from the Burlington Northern and Santa Fe Railway
8 Company (Assessors Parcel Numbers 559-040-46, and -47). Pacific Steel does not have a state
9 permit, certificate, registration, variance, or interim status to manage hazardous waste at the site.

10 2. Inspection and Investigation Activities. The Department inspected the Site on
11 September 5 and 6, 2002, and issued a document entitled "Summary of Violations" on
12 September 6, 2002. On September 24, 2002, the Department issued an Imminent and Substantial
13 Endangerment Determination and Schedule for Compliance (No. 20020016) pursuant to Health
14 and Safety Code section 25187, in part to address immediate measures required to contain
15 alleged hazardous waste. The resolution of the issue of civil penalties was reserved for a later
16 time. On October 10, 2002, the Department issued a Complaint Investigation Report regarding
17 Pacific Steel. Additional monitoring and investigation of the Site was conducted by the
18 Department thereafter.

19 3. Alleged Violations of the Hazardous Waste Control Law. The complaint filed by
20 the Department in this action, in paragraphs 24 through 39, generally alleges the following facts
21 and violations regarding the Site: (i) unlawful storage of hazardous waste at the two processed
22 soil piles known as BNSF-1 and BNSF-2; (ii) unlawful storage of hazardous waste at a soil pile
23 known as N-2; (iii) unlawful storage of hazardous waste at a processed soil pile known as BNSF-
24 3; (iv) unlawful treatment of soil contaminated with hazardous waste by use of various
25 equipment, including a trammel, an Ex-Tec machine and an eddy current system; (v) unlawful
26 disposal of soil contaminated with hazardous waste at the Site during September 2002; (vi)
27 unlawful disposal of soil contaminated with hazardous waste at the Site during July 2002; (vii)
28 unlawful storage of soil contaminated with hazardous waste at a soil pile known as N-1; and

1 (viii) unlawful storage of soil contaminated with hazardous waste at a soil pile known as BNSF-
2 5. Pacific Steel denies that it violated any hazardous waste laws or regulations, and denies that
3 the Site created an imminent and substantial endangerment. Pacific Steel filed a Notice of
4 Defense with the Department on October 4, 2002, seeking a hearing on the issue of the alleged
5 violations.

6 4. Agreement to Settle Dispute. A dispute exists regarding the alleged violations.
7 The Department and Pacific Steel, as parties to this Stipulation, wish to avoid the expense of
8 further litigation and to ensure appropriate remedial activities at the Site. Therefore, the parties
9 have agreed to resolve (i) this civil action; (ii) the hazardous waste storage, treatment and
10 disposal violations alleged in the Summary of Violations prepared by the Department on
11 September 6, 2002; (iii) the Imminent and Substantial Endangerment Determination and
12 Schedule for Compliance issued by the Department to Pacific Steel on September 24, 2002, as
13 the Department's Docket No. 20020016; and (iv) the Complaint Investigation Report issued by
14 the Department to Pacific Steel on October 10, 2002, by mutually consenting to the entry by the
15 Superior Court of San Diego County ("Court") of the Final Judgment and Injunction Pursuant to
16 Stipulation in the form attached hereto and labeled as Exhibit 1 ("Judgment"). It is the position
17 of the Department that (i) this Stipulation and the Judgment are fair and reasonable and fulfill the
18 Department's enforcement objectives; (ii) no further action is warranted under the Hazardous
19 Waste Control Law, Health and Safety Code section 25100 et seq., concerning the matters settled
20 herein, except as provided for in this Stipulation and the Judgment; and (iii) this Stipulation and
21 the Judgment are in the best interests of the citizens of California.

22 5. Jurisdiction and Venue. Jurisdiction exists over this matter pursuant to Health
23 and Safety Code sections 25181, 25189 and 25189.2. Venue is proper pursuant to Health and
24 Safety Code section 25183.

25 6. Waiver of Hearing. Pacific Steel waives any right to a judicial hearing in this
26 matter prior to the entry of the Judgment.

27 7. Scope of Settlement. This Stipulation and the approval and entry by the Court of
28 the Judgment shall constitute full settlement of (i) the violations alleged in the complaint filed in

1 this action, which are referred to herein in paragraph 3; (ii) the violations alleged in the Summary
2 of Violations dated September 6, 2002; (iii) the alleged violations set forth in the Imminent and
3 Substantial Endangerment Determination and Schedule for Compliance issued by the
4 Department to Pacific Steel on September 24, 2002, as the Department's Docket No. 20020016;
5 (iv) the alleged violations set forth in the Complaint Investigation Report regarding Pacific Steel
6 issued by the Department on October 10, 2002; and (v) all costs (including, but not limited to,
7 response costs, investigation expenses, and attorney's fees) incurred by the Department through
8 the date of entry of the Judgment. This Stipulation and the Judgment shall not settle any other
9 violations or restrict in any way the Department from taking appropriate enforcement action
10 concerning any violations not specifically settled in this Stipulation and the Judgment.

11 8. No Admission of Liability. Pacific Steel does not admit any of the violations
12 alleged in the complaint filed in this action. However, Pacific Steel agrees that it will not contest
13 the allegations of fact alleged in the complaint filed in this action for purposes of any subsequent
14 action brought by the Department pursuant to the Hazardous Waste Control Law within five
15 years of the effective date of the Judgment.

16 9. Liability. Except as expressly provided herein, nothing in the Judgment shall
17 constitute or be construed as a satisfaction or release from liability for any conditions or claims
18 arising as a result of past, current, or future operations of Pacific Steel, including, but not limited
19 to, all rights the Department may have to compel Pacific Steel to take, and/or pay the costs, of
20 corrective action, removal actions, remedial actions or other environmental response actions in a
21 manner consistent with paragraph 3.1 of the Judgment.

22 10. Additional Enforcement Actions. The Department reserves the right to take any
23 further enforcement action concerning any violation of law not specifically alleged in paragraphs
24 24 through 39 of the complaint filed in this action or settled in the Judgment.

25 11. Parties Bound. The Judgment shall apply to and be binding upon Pacific Steel
26 and its officers, directors, agents, and any successor to Pacific Steel, and upon the Department
27 and any successor agency of the Department that may have responsibility for and jurisdiction
28 over the subject matter of the Judgment.

1 12. Entire Agreement. This Stipulation and the Judgment comprise the entire
2 agreement and understanding of the Department and Pacific Steel with respect to the entire
3 subject matter hereof, and any and all prior discussions, negotiations, commitments and
4 understandings related hereto. No representations, oral or otherwise, express or implied, other
5 than those contained in the Stipulation and the Judgment have been made by any party hereto.
6 No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to
7 exist or to bind any of the parties.

8 13. Authorization to Settle. Each signatory to this Stipulation certifies that he or she
9 is fully authorized by the party he or she represents to enter into this Stipulation on behalf of the
10 party represented and legally to bind that party.

11 14. Entry of Judgment Required. The Judgment shall be null and void, and be
12 without any force or effect, unless entered by the Court in this matter. If the Judgment is not
13 entered by the Court, the execution of this Stipulation by Pacific Steel and the Department shall
14 not be construed as an admission by Pacific Steel or the Department of any fact, conclusion of
15 law, issue of law, or violation of law.

16 15. Governing Law. The terms of this Stipulation and the Judgment shall be
17 governed by the laws of the State of California.

18 16. Counterparts and Facsimile. This Stipulation may be executed in counterparts
19 and facsimile, each of which shall be deemed an original, and all of which, when taken together,
20 shall constitute one and the same document.

21 //

22 //

23 //

24 //

25 //

26 //

27 //

28 //

1 //

2 17. Filing Procedure. The filing of this Stipulation and the Final Judgment may be
3 made by the ex parte appearance of the Department's counsel before the Court without further
4 notice to defendant Pacific Steel, Inc.

5 APPROVALS OF THE PARTIES

6 IT IS SO AGREED.

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

7 Original signed by Kim Wilhelm

8 Dated: 6/2/04

Kim Wilhelm
Division Chief
Statewide Compliance Division
California Department of Toxic Substances Control

12 IT IS SO AGREED.

PACIFIC STEEL, INC.

13 Original signed by Fernando Solorzano

14 Dated: 7/20/04

Fernando Solorzano
President
Pacific Steel, Inc.

17 APPROVED AS TO FORM:

18 Bill Lockyer, Attorney General of the State of California
19 Tom Greene, Chief Assistant Attorney General
Theodora Berger, Senior Assistant Attorney General

20 Original signed by Timothy R. Patterson

21 Dated: 7-20-2004

Timothy R. Patterson
Supervising Deputy Attorney General

22 Attorneys for Plaintiff People of the State of California, ex rel.
23 Edwin F. Lowry, Director, California Department of
24 Toxic Substances Control

25 Latham & Watkins LLP

26 Original signed by Kelly E. Richardson

27 Dated: 7/20/04

Kelly E. Richardson, Esq.

28 Attorneys for Defendant Pacific Steel, Inc.

1
2
3
4
5
6
7
8
9 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF SAN DIEGO

11
12 PEOPLE OF THE STATE OF CALIFORNIA, ex rel.
13 Edwin F. Lowry, Director, California Department of
Toxic Substances Control,

14 Plaintiff,

15 v.

16 PACIFIC STEEL, INC., a California corporation,

17 Defendant
18

Case No.:

GIC

833049

FINAL JUDGMENT AND
INJUNCTION PURSUANT TO
STIPULATION

19 Plaintiff, the People of the State of California, ex rel. Edwin F. Lowry, Director,
20 California Department of Toxic Substances Control ("Department"), having filed its Complaint
21 and defendant Pacific Steel, Inc., a California corporation ("Pacific Steel"), having accepted
22 service of the Complaint filed in this action; and

23 The Department, appearing through its attorneys Bill Lockyer, Attorney General, by
24 Timothy R. Patterson, Supervising Deputy Attorney General and defendant Pacific Steel,
25 appearing through its attorneys Latham & Watkins LLP, by Kelly E. Richardson, Esq.; and

26 The Department and Pacific Steel, having consented to the entry of this Final Judgment
27 and Injunction Pursuant to Stipulation ("Judgment") prior to the taking of any proof and without
28 trial or adjudication of any fact or law herein; and

1.

1 The Court having considered the pleadings, which consist of the Complaint, the parties'
2 Stipulation for Entry of Final Judgment and Injunction, and the proposed Final Judgment and
3 Injunction Pursuant to Stipulation;

4 IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

5 JURISDICTION AND VENUE

6 1. Jurisdiction exists over this matter pursuant to Health and Safety Code sections
7 25181, 25189 and 25189.2. Venue is proper pursuant to Health and Safety Code section 25183.

8 APPLICABILITY

9 2. The provisions of this Judgment shall apply to and be binding upon defendant
10 Pacific Steel and its officers, directors, agents, and any successor to Pacific Steel and upon the
11 Department and any successor agency of the Department that may have responsibility for and
12 jurisdiction over the subject matter of this Judgment.

13 INJUNCTION AND SCHEDULE FOR COMPLIANCE

14 3. Pacific Steel shall continue to maintain effective covers over all piles of soil and
15 all other material at its facility located at 1700 Cleveland Avenue, National City, California
16 91950-4215 ("the Site") known to contain or that may contain hazardous waste constituents, for
17 the purpose of preventing any release of hazardous waste or hazardous waste constituents into the
18 environment by wind dispersion or any other means, until such material has been disposed of or
19 otherwise handled as directed by the Department pursuant to its authority under state law and
20 federal law, consistent with any Department-approved work plans submitted by Pacific Steel.

21 3.1 Within fifteen (15) days of the entry of this Judgment, Pacific Steel shall enter
22 into a Corrective Action Consent Agreement with the Department, pursuant to Health and Safety
23 Code section 25187, in order to carry out the investigation, corrective action, removal action
24 and/or remedial action necessary to address any release or threatened release of hazardous waste
25 or hazardous waste constituents at or from all parcels of real property of which the Site is
26 comprised. Pacific Steel shall implement all necessary investigation, corrective action, removal
27 action and/or remedial action as required by the Department pursuant to the Corrective Action
28 Consent Agreement, in accordance with Department-approved work plans, reports and schedules,

1 as well as applicable statutory and regulatory requirements. The purpose of this requirement is to
2 allow the Department to address all potential environmental issues concerning contamination
3 related to the Site. Pursuant to Health and Safety Code sections 25187 and 25187.2, Pacific
4 Steel shall reimburse the Department for costs incurred by the Department, commencing on the
5 effective date of the Corrective Action Consent Agreement, in overseeing the investigation,
6 corrective action, removal action and/or remedial action required by the Corrective Action
7 Consent Agreement. Any dispute regarding compliance with the Corrective Action Consent
8 Agreement shall be handled by the Department pursuant to its enforcement authority.

9 MONETARY RELIEF

10 4. Pacific Steel shall make a total monetary payment of two hundred thirty-five
11 thousand dollars (\$235,000.00). Of the total payment of \$235,000.00, 25 percent or \$58,750.00,
12 shall be designated as a Supplemental Environmental Project, in the form of a payment to the
13 Environmental Enforcement and Training Account referenced in California Penal Code section
14 14300 et seq. Pacific Steel shall make its check in the amount of \$58,750.00 payable to the
15 "Secretary of the California Environmental Protection Agency" and deliver it to:

16 Timothy R. Patterson, Supervising Deputy Attorney General
17 Office of the Attorney General
18 110 West A Street, Suite 1100
San Diego, CA 92101

19 This payment shall be due on the date of entry of this Judgment.

20 4.1. The sum of \$131,250 shall be designated as civil penalties due under the
21 Hazardous Waste Control Law, Health and Safety Code section 25189.2. The remaining sum of
22 \$45,000.00 shall be designated as costs. The civil penalties and costs are payable in three equal
23 installments over the course of one year. The first payment of \$58,750.00 shall be due within
24 120 days of entry of this Judgment. The second payment of \$58,750.00 shall be due within 240
25 days of entry of this Judgment. The third and final payment of \$58,750.00 shall be due within
26 360 days of entry of this Judgment. In complying with the payment requirements for civil
27 penalties and costs set forth in this paragraph, Pacific Steel shall issue checks payable to the
28 "California Department of Toxic Substances Control" and shall deliver such checks to:

1 Department of Toxic Substances Control
2 Accounting Office
3 1001 I Street
P.O. Box 806
4 Sacramento, California 95812-0806

5 A photocopy of each check shall be sent to:

6 Peter J. Wood
7 Senior Hazardous Substances Scientist
8 Department of Toxic Substances Control
1001 I Street
P.O. Box 806
Sacramento, California 95812-0806

9 ADDITIONAL STIPULATED PENALTIES

10 FOR FAILURE TO COMPLY WITH MONETARY RELIEF SCHEDULE

11 4.2 If Pacific Steel fails to meet any payment deadline set forth in paragraphs 4 and
12 4.1 of this Judgment, Pacific Steel shall be obligated to pay the Department an additional amount
13 of five hundred dollars (\$500.00) per day, for each day following any such payment deadline
14 during which Pacific Steel has not paid the amount owed.

15 OTHER PROVISIONS

16 5. Enforcement of Judgment. The Department's counsel may, by motion or order to
17 show cause before the Superior Court of San Diego County, enforce the terms and conditions
18 contained in this Judgment. In any action brought by the Department to enforce this Judgment,
19 the Department may seek whatever fines, costs, fees, penalties or remedies are provided by law
20 for failure to comply with this Judgment. Where said failure to comply constitutes future
21 violations of the Hazardous Waste Control Law, Health and Safety Code section 25100 et seq.,
22 or other laws, independent of this Judgment and/or those alleged in the complaint, the
23 Department is not limited to enforcement of this Judgment, but may seek in another action,
24 subject to satisfaction of any procedural requirements, including notice requirements, whatever
25 fines, costs, fees, penalties or remedies are provided by law for failure to comply with the
26 Hazardous Waste Control Law or other laws. However, the rights of Pacific Steel to defend
27 itself and its actions in law or equity shall not be abrogated or reduced in any fashion by the
28 terms of this paragraph and Pacific Steel shall be entitled to raise any and all applicable defenses,

1 rights and remedies.

2 6. Modification. This Judgment may be modified from time to time by express
3 written agreement of the parties, with the approval of the Court, or by an order of this Court in
4 accordance with law.

5 7. Retention of Jurisdiction. The Court shall retain jurisdiction of this matter to
6 implement this Judgment.

7 8. Entry of Judgment. The Clerk of the Court is ordered to enter this Judgment.

8 **IT IS SO ORDERED, ADJUDGED AND DECREED.**

9
10 Dated: JUL 26 2004

STEPHANIE SONTAG
Judge of the Superior Court